



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2022-0373; FRL-9765-01-R9]

Air Plan Revisions; California; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; partial withdrawal of proposed rule; withdrawal of proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing a limited approval and limited disapproval of two revised rules and an approval of a rule rescission to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern emissions of volatile organic compounds (VOCs) from marine and pleasure craft coating operations and the coating of metals. The EPA previously proposed to fully approve these SIP revisions on the grounds that they satisfied the relevant requirements under the Clean Air Act (CAA or the Act). After the comment periods, the EPA identified a deficiency in the submittals that warrants a limited disapproval. Therefore, we are withdrawing our previously proposed approvals of these SIP revisions as they pertain to these rules, published in the *Federal Register* on May 20, 2021, and August 24, 2021, and now propose a limited approval and limited disapproval for these revisions into the California SIP.

DATES: As of [Insert date of publication in the *Federal Register*], the proposed approval of Rule 1107 in the proposed rule published on May 20, 2021 (86 FR 27344), and the proposed rule published on August 24, 2021 (86 FR 47268), are withdrawn. Comments on this proposed limited approval and limited disapproval and approval must be received on or before [Insert date 30 days after date of publication in the *Federal Register*].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2022-0373 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed

from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Arnold Lazarus, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3024 or by email at Lazarus.Arnold@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

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I. The State's Submittal

A. What rules and rule rescission did the State submit?

Table 1 lists the rule revisions addressed by this proposal with the dates that they were amended or rescinded by the local air agency and submitted by the California Air Resources Board (CARB) to the EPA.

TABLE 1 - SUBMITTED RULES

Local Agency	Rule #	Rule Title	Amended	Rescinded	Submitted
SCAQMD	1106	Marine and Pleasure Craft Coatings	5/3/2019		2/19/2020
SCAQMD	1106.1	Pleasure Craft Coating Operations		5/3/2019	2/19/2020
SCAQMD	1107	Coating of Metal Parts and Products	2/7/2020		7/24/2020

On August 19, 2020, the submittal for SCAQMD Rule 1106 and the rescission of Rule 1106.1 was deemed by operation of law to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

On November 24, 2020, the EPA determined that the submittal for SCAQMD Rule 1107 met the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

We approved an earlier version of SCAQMD Rule 1106 into the SIP on July 14, 1995 (60 FR 36227), and we approved SCAQMD Rule 1106.1 into the SIP on August 31, 1999 (64 FR 47392). The SCAQMD adopted revisions to the SIP-approved versions of these rules on May 3, 2019, and CARB submitted them to us on February 19, 2020.

We approved an earlier version of SCAQMD Rule 1107 into the SIP on November 24, 2008 (73 FR 70883). The SCAQMD adopted revisions to the SIP-approved version of this rule on February 7, 2020, and CARB submitted them to us on July 24, 2020.

C. What is the purpose of the submitted rules and rule rescission?

Emissions of VOCs contribute to the production of ground-level ozone, smog, and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Rule 1106 regulates VOC emissions from all marine and pleasure craft coating operations, including coatings for boats, ships and their appurtenances, buoys, and oil drilling rigs intended for the marine environment, and applies to any person who solicits or requires any other person to use a marine coating. The rule was amended to include pleasure craft coating operations, lower the VOC content limit of a number of existing coatings, and add five coatings to the specialty coating list. Rule 1106.1, Pleasure Craft Coating Operations, has been locally rescinded; however, all of the coatings limits, work practices, test methods and administrative aspects in Rule 1106.1 are now covered by Rule 1106.

Rule 1107 regulates VOC emissions from all metal coating operations. Rule 1107 was required to be updated in order to meet current reasonably available control technology (RACT) for sources covered by the 2008 Control Techniques Guidelines (CTG) for Miscellaneous Metal and Plastic Parts Coatings (MMPP). For example, the rule revision lowers its exemption requirement from 10 tons per year of potential emissions of VOC to the MMPP CTG specified total actual 2.7 tons of VOC per 12 month rolling period, per facility, as specified by the MMPP CTG.¹

The EPA's technical support documents (TSD) have more information about the rules and rule rescission.

II. The EPA's Evaluation and Action

A. *How is the EPA evaluating the rules and rule rescission?*

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other

¹ "Control Techniques Guidelines Miscellaneous Metal and Plastic Parts Coatings" (EPA-453/R-08-003, September 2008), page 3.

CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require RACT for each category of sources covered by a CTG document as well as each major source of VOC in ozone nonattainment areas classified as Moderate or above (see CAA section 182(b)(2)). The SCAQMD regulates an ozone nonattainment area classified as Extreme for the 1997, 2008, and 2015 8-Hour Ozone National Ambient Air Quality Standards (40 CFR 81.305). Rule 1106 is covered by “Control Techniques Guidelines for Shipbuilding and Ship Repair Operations” (61 FR 44050, August 27, 1996), and “Control Techniques Guidelines Miscellaneous Metal and Plastic Parts Coatings” (EPA-453/R-08-003, September 2008). Rule 1107 is covered by “Control Techniques: Guidelines for Miscellaneous Metals and Plastic Parts Coatings” (EPA-453/R-08-003, September 2008) and “Control of Volatile Organic Emissions from Existing Stationary Sources -Volume VI: Surface Coating of Miscellaneous Metal Parts and Products” (EPA-450/2-78-15, June 1978). Therefore, both rules must implement RACT.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation, and rule stringency requirements for the applicable criteria pollutants include the following:

- 1 "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
- 2 “Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,” EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
- 3 “Guidance Document for Correcting Common VOC & Other Rule Deficiencies,” EPA Region 9, August 21, 2001 (the Little Bluebook).
4. “Control Techniques Guidelines for Shipbuilding and Ship Repair Operations” (61 FR

44050, August 27, 1996).

5. “Alternative Control Techniques Document: Surface Coating Operations at Shipbuilding and Ship Repair Facilities” (EPA 453/R-94-032, April 1994).
6. “Control Techniques Guidelines Miscellaneous Metal and Plastic Parts Coatings” (EPA-453/R-08-003, September 2008).
7. “Control of Volatile Organic Emissions from Existing Stationary Sources -Volume VI: Surface Coating of Miscellaneous Metal Parts and Products” (EPA-450/2-78-15, June 1978).

B. Do the rules and rule rescission meet the evaluation criteria?

Rule 1106 improves the SIP by establishing more stringent emission limits on some coating categories, clarifying monitoring, recording and recordkeeping provisions. The rule is largely consistent with CAA requirements and relevant guidance regarding enforceability, and SIP revisions.

Rule 1107 improves the SIP by establishing more stringent emission limits on some coating categories, clarifying monitoring, recording and recordkeeping provisions. The rule is largely consistent with CAA requirements and relevant guidance regarding enforceability, and SIP revisions.

The rescission of Rule 1106.1 prevents redundancy in the SIP because the requirements of Rule 1106.1 were added to Rule 1106 in order to make one rule that covered all aspects of Marine and Pleasure Craft Coatings.

Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

C. What are the rule deficiencies?

The following provisions in Rules 1106 and 1107 include references to a test method, ASTM D7767-11 (2018) - “Standard Test Method to Measure Volatiles from Radiation Curable Acrylate Monomers, Oligomers and Blends and Thin Coatings Made from Them,” which is not

approved by the EPA and therefore cannot be used to enforce a SIP approved rule. Thus, these provisions do not satisfy the requirements of section 110 and part D of the Act and prevent full approval of the rules.

Rule 1106, Marine and Pleasure Craft Coatings:

1. Section (c)(9) Definitions: “Energy Curable Coatings.”
2. Section (i)(1) Exemption: “Energy Curable Coatings.”

Rule 1107, Coating of Metal Parts and Products:

1. Section (b)(15) Definition: “Energy Curing Coatings.”
2. Section (e)(1)(C) Methods of Analysis: Determination of VOC Content: Thin Film Energy Curable.

D. EPA recommendations to further improve the rules.

The relevant TSD includes recommendations to further improve Rule 1106 including:

1. Section (d) Requirements, Table of Standards, “Metallic Heat Resistant Coating,” is not in the 1996 Marine Coatings CTG. We suggest that it be removed.
2. Section (d) Requirements, Table of Standards, “Elastomeric Adhesives,” is not in the 1996 Marine Coatings CTG. We suggest that it be removed.

E. Proposed action and public comment

As authorized in sections 110(k)(3) and 301(a) of the Act, the EPA is proposing a limited approval and limited disapproval of Rules 1106 and 1107 and an approval of the rescission of Rule 1106.1. Simultaneously, the EPA is withdrawing its August 24, 2021 proposed approval of Rule 1106 and rescission of Rule 1106.1 and its May 24, 2021 proposed approval of Rule 1107 based on the deficiencies described above. We will accept comments from the public on this proposal until **[Insert date 30 days after date of publication in the Federal Register]**. If finalized, this action would incorporate the submitted rules into the SIP, including those provisions identified as deficient. This approval is limited because the EPA is simultaneously proposing a limited disapproval of the rules under section 110(k)(3). If we finalize these limited

disapprovals, CAA section 110(c) would require the EPA to promulgate a federal implementation plan within 24 months unless we approve subsequent SIP revisions that correct the deficiencies identified in the final approval.

Additionally, a final disapproval would trigger the offset sanction in CAA section 179(b)(2) 18 months after the effective date of a final disapproval, and the highway funding sanction in CAA section 179(b)(1) six months after the offset sanction is imposed. A sanction will not be imposed if the EPA determines that a subsequent SIP submission corrects the deficiencies identified in our final action before the applicable deadline.

Note that the submitted rules have been adopted by the SCAQMD, and the EPA's final limited disapproval would not prevent the local agencies from enforcing them. The limited disapprovals also would not prevent any portion of the rules from being incorporated by reference into the federally enforceable SIP, as discussed in a July 9, 1992 EPA memo on processing SIP submittals.²

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference SCAQMD Rule 1106, rescission of SCAQMD Rule 1106.1 and SCAQMD Rule 1107 described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

²See *Processing of State Implementation Plan (SIP) Submittals* Memorandum from John Calgani, Director Air Quality Management Division, to EPA Regional Offices, July 9, 1992.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563:

Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive

Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 15, 2022.

Martha Guzman Aceves,
Regional Administrator,
Region IX.

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